IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1.CIVIL WRIT No. 2266 of 2006

NAND LAL & ORS.
V/S
CIVIL JUDGE(S.D.),RATANGARH & ANR.

2.CIVIL WRIT No. 3430 of 2006

BABULAL
V/S
CIVIL JUDGE(S.D.)RATANGARH & ORS.

Mr. BALA RAM for Mr. KC SAMDARIYA, for Nand Lal.

Mr. AK KHATRI for Mr. GL KHATRI, for Babulal.

Date of Order : 16.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The writ petition no. 2266/2006 comes up for consideration of stay, and the other writ no. 3430/2006 which also challenges one of the same impugned order dt. 23.3.2006 is also listed today along with this writ petition. Though Writ Petition No. 3430 has already been admitted, and interim stay has been confirmed, however, since further proceedings in the suit are stayed, and the matter involved is very short, at the request of the learned counsel for the parties both the matters are being finally disposed of.

So far Writ No. 2266/2006 is concerned that seeks to challenge the order dt. 23.3.2006 so far as it permits the plaintiff to summon his witnesses in his rebuttal evidence. Suffice it to say that the learned trial court has given cogent reasons that since it is not possible for the plaintiff to produce those witnesses as they are not prepared to come without being summoned, and since the defendant has led evidence on the issues no. 3, 4, 5, and 6, the plaintiff is entitled to lead evidence in rebuttal.

In my view, in the above circumstances that order does not require any interference, however, it is made clear that the plaintiff will not be entitled to take undue advantage of this order to prolong the matter in the garb of summoning the witnesses, and it is directed that the summons be issued to the witnesses, and be given dasti to the plaintiff, and in case the plaintiff fails to serve them, and produce them on the date that may be fixed by the learned trial court right to produce those witnesses shall come to an end. This disposes of the Writ Petition No. 2266/2006.

So far Writ Petition No. 3430/2006 is concerned, both the impugned orders are passed in view of the earlier order passed by the learned trial court being dt. 10.7.2000 which was challenged before this Court in Civil Revision

No. 474/2000 which revision was dismissed on 15.11.2003 giving liberty to the plaintiff to assail the order impugned therein by seeking such other remedy as may be available to him under law. Admittedly no such remedy has been availed.

In that view of the matter during progress of trial of the suit that order became final, and that being the position I do not find any error in the impugned order Annexure-11 & 14.

The Writ Petition No. 3430 is, therefore, dismissed. The learned trial court is, however, directed to decide the main suit expeditiously.

(N P GUPTA),J.

/Sushil/